MOTION FILED

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No. 06-162

In The
Supreme Court of the United States

SANDRA CANO, FORMERLY KNOWN AS MARY DOE,

Petitioner,

v.

THURBERT E. BAKER, Attorney General of Georgia,
PAUL L. HOWARD, JR., District Attorney
of Fulton County, Georgia,
RICHARD PENNINGTON, Chief of Police
of the City of Atlanta,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF AMICUS CURIAE J. BUDZISZEWSKI IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

Under Rule 37.2 of the Rules of this Court, J. Budziszewski moves for leave to file the accompanying brief in support of the petition for a writ of certiorari. Counsel for petitioner has consented to the filing of this brief, but counsel for respondent Thurbert E. Baker has been asked for consent and has not consented.

J. Budziszewski, Ph.D. (Yale, 1981), is a Professor in the Departments of Government and Philosophy, University of Texas at Austin. He is a philosopher of ethics and politics specializing in conscience, moral honesty, and moral self-deception. His books include *True Tolerance* (1992), *Written on the Heart: The Case for Natural Law* (1997), *The Revenge of Conscience* (1999), and *What We Can't Not Know* (2003), and his scholarly articles and reviews have appeared in such journals as *The American Political Science Review* and *The American Review of Jurisprudence*.

The wrong of deliberately taking innocent human life is so profoundly lodged in the human moral intellect that it is impossible for the normal adult woman not to experience participation in abortion as an assault on her own conscience. Insofar as the abortion right recognized by this Court depends on certain assumptions about human psychological health, its conclusion hinges upon whether these assumptions are true. This brief discusses those assumptions and their relevance to petitioner's request that this Court reconsider the decision in *Doe v. Bolton*.

J. Budziszewski respectfully requests that the Court grant the instant motion and grant him leave to file the accompanying brief in support of petitioner.

Respectfully submitted,

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BRIEF OF *AMICUS CURIAE* J. BUDZISZEWSKI IN SUPPORT OF PETITIONER

This *amicus curiae* brief is submitted in support of the petitioner.[1]

STATEMENT OF INTEREST OF THE *AMICUS CURIAE*

The interest of the *amicus curiae* has been set forth in the accompanying motion for leave to file this brief.

SUMMARY OF THE ARGUMENT

The United States Supreme Court should re-evaluate *Roe v. Wade,* 410 U.S. 113 (1973), and *Doe v. Bolton*, 410 U.S. 179 (1973), because of the destructive effect of abortions on women who have them. Certain foundational moral beliefs are so deeply rooted in the human moral intellect that it is impossible for the normal adult not to hold them. Among these is the wrong of deliberately taking innocent human life. Because of this, a woman who takes the life of her child violates her own conscience – even if, in the foreground of moral awareness, she considers abortion to be morally licit. Conscience is not a mere passive barrier or inhibition, but an active force that avenges itself upon attempts to violate its integrity. For

[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that the brief was prepared in its entirety by *amicus curiae* and his counsel. No monetary contribution toward the preparation or submission of this brief was made by any other person other than *amicus curiae* and his counsel.

this reason, the woman's violation of her own conscience brings about profoundly destructive consequences. The affidavits of post-abortive women filed by Petitioner in the district court confirm and illustrate these consequences.

ARGUMENT

I. The United States Supreme Court Should Re-Evaluate *Roe v. Wade* Because Of The Destructive Effect Of Abortion On Women Who Have Them.

When the U.S. Supreme Court declared, in *Roe v. Wade*[2] and *Doe v. Bolton*[3] that the Constitution guarantees a right to abortion as a dimension of the right of privacy, it did so not through a narrow construction of the document's language – for, as Justice Blackmun wrote, "[t]he Constitution does not explicitly mention any right of privacy,"[4] much less any right to abortion – but through a broader argument based in large part on the assumption that women would be psychologically harmed should abortion be prohibited. Justice Blackmun explained as follows:

> This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate

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[2] *Roe v. Wade*, 410 U.S. 113 (1973).

[3] *Doe v. Bolton*, 410 U.S. 179 (1973).

[4] *Roe*, 410 U.S. at 152.

> her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. *Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved.* All these are factors the woman and her responsible physician necessarily will consider in consultation.[5]

Moreover, continued Justice Blackmun, the privacy right is not absolute: "[T]his right is not unqualified and must be considered against important state interests in regulation,"[6] these interests including, *inter alia,* the protection of health.

Insofar as the abortion right depends on certain assumptions about human psychological health, its conclusion hinges upon whether these assumptions are true. Therefore, should these assumptions be called into question by new evidence, the Supreme Court should reconsider *Roe v. Wade* and *Doe v. Bolton.* This is in fact the case.

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[5] *Id.* at 153 (emphasis added).

[6] *Id.* at 154.

II. Certain Foundational Moral Beliefs Are So Deeply Rooted In The Human Moral Intellect That It Is Impossible For The Normal Adult Not To Hold Them.

There exist certain foundational moral beliefs that all people hold – principles that a normal human adult is unable *not* to believe.[7] They are a universal inheritance of the human race. These include the knowledge of certain goods, such as the good of friendship; of certain formal norms, such as the norm of treating equals equally; and of certain everyday moral rules, such as the rule "Do not murder."[8]

Whether these universal beliefs are actually true does not concern us in this *amicus* brief. The important thing is that they are, in fact, universal. To be sure, culture and socialization play a substantial role in forming the details of moral belief. The basic beliefs of which we are speaking, however, constitute the universal background of the moral landscape, against which these details become visible. We may also think of them as the universal deep structure of

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[7] We do not hold such moral beliefs merely because they are taught to us, but because they seem true in themselves. To say so does not in any way require the philosophically problematic claim that such beliefs are "innate." If they were innate, then we would be born with them; however, newborn infants are not yet capable of conceptual knowledge, and, in the strict sense, cannot be said to hold any beliefs whatsoever.

[8] For discussion of moral universals from various perspectives, see Donald E. Brown, *Human Universals* (McGraw Hill, 1991); J. Budziszewski, *What We Can't Not Know* (Spence, 2003); John M. Finnis, *Natural Law and Natural Rights* (Oxford University Press, 1980); Francis Fukuyama, *The Great Disruption: Human Nature and the Reconstitution of Social Order* (Simon and Schuster, 1999); and Neil Roughley, *Being Humans: Anthropological Universality and Particularity in Transdisciplinary Perspectives* (Walter de Gruyter, 2000).

conscience, by contrast with the culturally variable surface.[9] Surveying this universal background, anthropologist Clyde Kluckhohn writes:

> Every culture has a concept of murder, distinguishing this from execution, killing in war, and other "justifiable homicides." The notions of incest and other regulations upon sexual behavior, of prohibitions upon untruth under defined circumstances, of restitution and reciprocity, of mutual obligations between parents and children – these and many other moral concepts are altogether universal.[10]

In the same vein, anthropologist John M. Cooper writes that:

> [t]he peoples of the world, however much they differ as to details of morality, hold universally, or with practical universality, to at least the following basic precepts. Respect the Supreme Being or the benevolent being or beings who take his place. Do not "blaspheme." Care for your

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[9] This distinction between the two levels of conscience is old in Western reflection. Classically, philosophical psychology has called these two levels *synderesis,* which we may paraphrase as "deep conscience," and *conscientia,* which we may paraphrase as "surface conscience." The first systematic treatise on conscience was written by Phillip the Chancellor and included in his *Summa de Bono,* written in the thirteenth century. The most influential account of the relationship between deep conscience and surface conscience is due to Thomas Aquinas, especially his *Quaestiones Disputatae de Veritate,* Questions 16 and 17, in the fourteenth. For discussion of the early texts, see Timothy C. Potts, *Conscience in Medieval Philosophy* (Cambridge University Press, 1980).

[10] Clyde Kluckhohn, *Ethical Relativity: Sic et Non,* 52 J. PHIL. 663, 663 (1955), *in* John Ladd, ed., *Ethical Relativism* 78-95 (University Press of America, 1985).

> children. Malicious murder or maiming, stealing, deliberate slander or "black" lying, when committed against friend or unoffending fellow clansman or tribesman, are reprehensible. Adultery proper is wrong, even though there be exceptional circumstances that permit or enjoin it and even though sexual relations among the unmarried may be viewed leniently. Incest is a heinous offense. This universal moral code agrees rather closely with our own Decalogue taken in a strictly literal sense.[11]

III. Among Such Foundational Moral Beliefs Is The Wrong Of Deliberately Taking Innocent Human Life.

The wrong of murder is acknowledged in all human cultures. To be sure, if murder were defined merely as "wrongful killing," then to say that murder is wrong would be merely circular. Such is the view of Judge Richard Posner:

> First, morality is local. There are no *interesting* moral universals. There are tautological ones, such as "Murder is wrong," where murder means "wrongful killing," and there are a few rudimentary principles of social cooperation – such as "Don't lie all the time" or "Don't break promises without *any* reason" or "Don't kill your relatives or neighbors indiscriminately" – that may be common to all human societies. If one wants to call these rudimentary principles the universal

[11] John M. Cooper, *The Relations Between Religion and Morality in Primitive Culture*, *in* 4 PRIMITIVE MAN [now ANTHROPOLOGICAL QUARTERLY] 36 (1931).

> moral law, fine; but as a practical matter, no moral code can be criticized by appealing to norms that are valid across cultures, norms to which the code of a particular culture is a better or worse approximation. Those norms, the rudimentary principles of social cooperation that I have mentioned, are too abstract to serve as standards for moral judgment. Any meaningful moral realism is therefore out, and moral relativism (or rather a form of moral relativism to which I'll return shortly) is in.[12]

But only the most superficial consideration could support the conclusion that nothing more is meant by murder than "wrongful killing." True, not all killing is murder, and the injunction has not traditionally been taken to forbid self-defense, capital punishment, or just war. Even so, what makes killing wrong is not completely variable. Murder is everywhere understood to take in at least[13] the deliberate taking of innocent human life.

It may seem that the wrong of deliberately taking innocent human life could not really belong to the deep structure of human conscience, because there are cultural counterexamples. What about the Holocaust, for example? Surely Nazis had no scruples about killing innocents. Surprisingly, for all their cruelty, not even the Nazi death camp guards could expunge their consciences of the

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[12] Richard Posner, *The Oliver Wendell Holmes Lectures: The Problematics of Moral and Legal Theory*, 111 HARV. L. REV. 1637, 1640 (1998).

[13] I say "at least" because additional forms of killing may also be considered murderous, for example the execution of a guilty person for light cause, without a fair trial, or by one without public authority to carry out the penalty.

knowledge of the wrong of deliberately taking innocent human life. In order to carry out the killings, somehow they had to convince themselves that the wholesale extermination of Jews did not fit into this category. The Nazi propaganda theme of the *untermensch,* or underman, played into this effort by contending that the Jews were either not innocent, not human, or both. One SS pamphlet contended, "From a biological point of view he seems completely normal. He has hands and feet and a sort of brain. But, in fact, he is a completely different creature, a horror. He only looks human, with a human face, but his spirit is lower than that of an animal. A terrible chaos runs rampant in this creature, an awful urge for destruction, primitive desires, unparalleled evil, a monster, subhuman."[14] Jews were also dehumanized in other ways, for example by being herded naked from the train disembarkation platform to the barracks, so that they would seem like mere cattle to prison guards. Gitta Sereny asked Franz Stangl, the former commandant of the Treblinka death camp, "If they were going to kill them anyway, what was the point of all the humiliation, why the cruelty?" He replied, "To condition those who actually had to carry out the policies. To make it possible for them to do what they did."[15]

In the end, not even these measures could fully deceive the deep structures of conscience; guilty knowledge remained an overwhelming burden for the exterminators. Psychologist Robert Jay Lifton reports on an

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[14] Tom Segev, *Soldiers of Evil: The Commandants of the Nazi Concentration Camps* 80 (Haim Watzman, trans., McGraw-Hill, 1987).

[15] Gitta Sereny, *Into That Darkness: An Examination of Conscience* 101 (Vintage Books, 1983) (1974).

interview with a former Wehrmacht neuropsychiatrist who had treated large numbers of death camp soldiers for psychological disorders. Their symptoms were much like those of combat troops, but were more severe and lasted longer. The men had the hardest time shooting women and children, especially children, and many of them had nightmares of punishment or retribution.[16]

We return below to the theme of conflict between deep conscience and surface moral belief. Such conflict is especially terrible in the case of abortion.

IV. Because The Wrong Of Deliberately Taking Innocent Human Life Is So Deeply Rooted In The Human Moral Intellect, A Woman Who Takes The Life Of Her Child Violates Her Own Conscience – Even If, In The Foreground Of Moral Awareness, She Considers Abortion To Be Morally Licit.

If deep conscience really does hold within it a belief in the wrong of deliberately taking innocent human life, then consider where this leaves a woman who has an abortion. Parsing the rule against murder, there are only six possibilities of rationalization. She may tell herself (1) that her act is not *deliberate,* (2) that she is not *taking* anything, (3) that the unborn child is not *innocent,* (4) that it is not *human,* (5) that it is not *alive,* or (6) that what is wrong *may be done.*

For purposes of the present analysis, the problem is not that all six lines of justification are literally unthinkable. Indeed, all six are commonly entertained. The

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[16] Robert Jay Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* 15 (Basic Books, 1986).

problem, rather, is that they are so implausible as to require a large dose of self-deception to be accepted. At the moment of decision, a woman may try desperately to talk herself into the rightness of abortion, but it is impossible to believe it "all the way down." To see why this happens, let us consider the six rationalizations one at a time.

Possibility 1: "It is wrong to *deliberately* take innocent human life. But I didn't mean for this to happen; I wasn't trying to get pregnant." The reasoning here is that if something happens that I do not intend – in this case, pregnancy – then no matter what I do about it, I am not responsible. This line of thinking is incompatible with any coherent idea of personal responsibility. It is like saying "I didn't plan for my wife to become disabled, therefore I am not responsible for poisoning her."

Possibility 2: "It is wrong to deliberately *take* innocent human life. But I'm not taking life, the doctors are doing it. This is just something happening to me. I'm not involved." This time the underlying reasoning is that once I have made a decision, the results are out of my hands – even if I planned and intended them. It is like saying, "I didn't take my landlady's life. If you want to blame someone for her death, blame the hit man I hired, not me."

Possibility 3: "It is wrong to deliberately take *innocent* human life. But the fetus isn't innocent. It has invaded me, violated me, made me pregnant." The sole purpose of the uterus is to home and house the baby, who has no place else to go. Yet the baby is here regarded as akin to a trespasser or rapist. Although it is hard to imagine an actual pregnant woman taking this view, some abortion proponents consider it quite promising, perhaps because

judges will sometimes believe things that ordinary women cannot. Thus, attorney Eileen McDonagh writes that the fetus is "objectively at fault for causing pregnancy."[17] It is "not innocent," she says, "but instead aggressively intrudes on a woman's body so massively that deadly force is justified to stop it."[18] Although "some might suggest that the solution to coercive pregnancy is simply for the woman to wait until the fetus is born," she complains that "[t]his type of reasoning is akin to suggesting that a woman being raped should wait until the rape is over rather than stopping the rapist."[19] Yet even McDonagh admits, in an unintentional testimony to the enduring power of the deep structures of conscience, "[f]ew people are going to be comfortable with the idea."[20]

Possibility 4: "It is wrong to deliberately take innocent *human* life. But it's not human – it can't feel, it can't think, it can't communicate – and how could it be human if it's so small?" Among pro-abortion philosophers, this rationalization is by far the most popular.[21] The reasoning is that human personhood, *who-ness,* depends on criteria like sensitivity, intelligence, and self-awareness, and the fetus is just a *what.* Of course born people too can be more or less sensitive, more or less intelligent, more or less self-aware. Therefore, by this reasoning, born people too must be unequally endowed with personhood – some more, some less. The only question is whom we shall have as our

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[17] Eileen L. McDonagh, *Breaking the Abortion Deadlock: From Choice to Consent* at 36 (Oxford University Press, 1996).

[18] *Id.* at 192.

[19] *Id.* at 11-12.

[20] *Id.* at 192.

[21] *See* Budziszewski, *supra* note 7, at ch. 3.

masters. At the top may be those with the most exquisite feelings, the most complex thoughts, the keenest sense of self – it is not difficult to guess who these philosophers have in mind. At any rate, such arguments merely touch the surface of moral awareness. It is a matter of everyday observation that pregnant women do think of their fetuses as human persons, and the thought comes back to haunt those who have had abortions. They view themselves as having violated not only the prohibition of murder but also the duty to care for their babies.

Possibility 5: "It is wrong to deliberately take innocent human *life*. But it's not alive, not truly. It's more like a blood clot. Or like my period just won't come down." Such a thing was easier for a woman to believe before the discovery of the nature of conception. It takes a ferocious act of denial to go on believing it in an age of moving ultrasound pictures. Blood clots do not roll over and suck their thumbs.

Possibility 6: "It is *wrong* to deliberately take innocent human life. But sometimes you have to do what's wrong." Logically, this option is nonsense. That something must not be done is what it means for it to be wrong; to deny that wrong may not be done is to say that wrong is not wrong, or that what must not be done may be done. Psychologically, however, the option is tempting: "I just can't have a baby right now. . . . My parents would have a fit. . . . My boyfriend would leave me." The pattern of the temptation is ancient: "Let me do evil that good may result." Some women who do what they themselves consciously regard as wrong try to square the act with perceived moral law by resolving to be sorry later. Whatever the ethical status of such a resolution, it is psychologically

devastating. By making it, one literally calls down upon oneself the Furies of conscience.

When a woman talks herself into a justifying script that she cannot really believe "all the way down," then her surface moral beliefs, such as they are, are at war with her deep conscience. This produces disastrous consequences.

V. Conscience Is Not A Mere Passive Barrier Or Inhibition, But An Active Force That Avenges Itself Upon Attempts To Violate Its Integrity. For This Reason, The Woman's Violation Of Her Own Conscience Brings About Profoundly Destructive Consequences.

Conscience operates in three modes. Two of these are matters of everyday observation. In the cautionary mode, conscience alerts us to the peril of moral wrong and generates an inhibition against committing it; in the accusatory mode, it indicts us for wrong we have already done. Again it must be emphasized that for purposes of this analysis, the question is not whether what deep conscience brands as wrong is really wrong, but only what happens when we violate it.

In its accusatory mode, the most obvious and well-known way in which conscience indicts us is through the feeling of remorse. However, remorse is the least of the Furies, for no one always feels remorse for doing wrong, and some people never do. Yet even when remorse is absent, the recognition of guilt generates profound and often hidden psychological needs for confession, atonement, reconciliation, and justification. These other four Furies may be called the greater sisters of remorse: Inflexible, inexorable, and relentless, demanding satisfaction even

when mere feelings are suppressed, fade away, or never come.

For this reason conscience may be said to operate not only in the cautionary and accusatory modes but in a harrowing third mode as well: The avenger, which punishes us when we act against its dictates. Conscience is therefore teacher, judge, or executioner, depending on the mode in which it is working – cautionary, accusatory, or avenging.

How the avenging mode works is not difficult to understand. The normal outlet of remorse is to flee from wrong; of the need for confession, to admit what one has done; of atonement, to pay the debt; of reconciliation, to restore the bonds one has broken; and of justification, to get back in the right. But a prerequisite for these outlets is acknowledging that one has done wrong and turning away from the wrong. When surface moral belief is at war with deep conscience – when it goes on insisting that the deed was blameless – then such acknowledgement of wrong is impossible, and the normal outlets of the Furies are blocked. Denied their payment in the normal coin, they exact payment in whatever coin comes nearest, driving the life of the one who has committed the deed yet further out of kilter.

For example, a woman who has assaulted her own conscience may flee not from wrong, but from thinking about it. In order to keep from thinking about it, she may seek chemical assistance in drugs or alcohol. Refusing herself the relief of explicit confession, she may compulsively tell every detail of her story except the moral. She may punish herself again and again, paying pain after pain, price after price, because she cannot undo what she

has done. She may simulate the restoration of broken intimacy by entering substitute relationships, or she may punish herself further by allowing herself only dysfunctional relationships. She may deny herself children, or after having children, she may refuse to allow herself to bond with them. She may seek a new pregnancy to bring back the lost child, but burden the new child with her effort to make it compensate for the aborted one. Or she may punish herself by ending the new pregnancy too. In this way a cycle of destruction may take place, each new abortion pushing up the ratchet of guilt another notch – simultaneously strengthening both her urge to become pregnant again, and her urge to punish herself for her last abortion by ending any new pregnancy that occurs. Finally she may exhaust herself in the futile effort to keep up the justifying script, to convince herself somehow that what deep conscience tells her is not true.

VI. The Affidavits Of Post-Abortive Women Submitted To The District Court In This Case Confirm That The Violation Of Conscience Has Destructive Consequences.

The affidavits of post-abortive women submitted to the district court in this case confirm and illustrate the destructive consequences of assaulting one's own conscience explained in the preceding section.

A number of the women speak of remorse, shame, self-accusation, and self-hatred. Robin in Tennessee writes "I felt so guilty and ashamed. I considered myself a murderer and unworthy of life."[22] Nancy in New Mexico comments on

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[22] *Appendix to Petition for Certiorari* at 129 [hereafter *Pet. App.*].

her "uncontrolled weeping" and inability to achieve stability in life.[23] Becky in Texas says that her abortion "killed my spirit. . . . Caused me to question if I deserve to have kids, could be a good parent, should work with kids, may love kids." Mary in Georgia, asked how her abortion has affected her life, replies simply "It's been *hell!!!*", and goes on to speak of grief, anger, low self-esteem, condemnation, and feelings of "immense regret." Catherine in Arizona states "I have lived with regrets and feelings of guilt since 1974."[24]

An interesting note in these affidavits is the women's amazement over the depth and intensity of their own remorse. R.G. in Florida says that for years, her guilt and shame were "unexplained" – in other words, she had not expected it and did not at first understand its source.[25] Becky in Texas concludes "I think those who don't suffer this, don't grasp the magnitude of the act." She contrasts it with chopping down a tree and saying "We'll plant more"; the tree can be replaced, the child is unique and cannot be.

The post-abortive women speak of other dimensions of agony as well, especially grief and sense of loss. Judith in New Mexico laments that "To this day I still cry and miss my two children. I felt a terrible void." Lori in Texas writes that her abortion "has affected every emotion, every relationship, every idea. There isn't a day that goes by that I don't think of my children." According to Robin in

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[23] The original affidavits for which citations to Petitioner's Appendix were not available can be found at http://www.operationoutcry.org/stories/storiesDir.asp.

[24] *Pet. App.* at 61.

[25] *Id.* at 99.

Tennessee, "I constantly thought about how the child looked, eye color, smell, complexion."[26] Other post-abortive women speak in their affidavits of nightmares, depression, anxiety, and anorexia.[27]

Withdrawal and avoidance are common psychological responses to the trauma of abortion among the women who have submitted affidavits. As Tara in Hawaii explains, "Mentally, I had to deal with the fact that I killed my child, yet think clearly, which was impossible to do for a while." In the same vein, Susan in Florida submits that she suffered "a numbness for years and years" along with "separation from God." We read in the affidavit of Terrie in Texas that "My abortion so traumatized me that it was 10 years before I could even talk about it. Now – 23 years later – I cannot even think about what an awful thing I did to my own baby without crying."[28] Another way to flee from remorse is to use mind-altering substances. Lori in Texas speaks for many of the women submitting affidavits when she writes, "I did many things to medicate my pain which led to a snowball effect of trying to medicate my pain." Quite a few of them began to abuse alcohol or drugs following their abortions.

In the previous section of this Argument, we spoke of the confessional need produced by assault upon conscience; the fact that the affidavits were submitted at all evidences the need to confess. Some of the women are explicit, however, about the confessional need. The most articulate of these is Mary in California, who explains "I

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[26] *Id.* at 130.

[27] *See, e.g., id.* at 58, 71, 73, 78, 100, 103, 109, 122, 151, 154, 171, 201-02.

[28] *Id.* at 81.

am now a counselor for others, after 30 years of emotional mental healing. The damage was overwhelming and I didn't understand why depression, drug & alcohol overwhelmed my life. I do now and I tell others of the consequences of an abortion."

Also prominent in the previous section of this Argument was the psychological need to atone, the sense that one must pay a price. One form this takes is the impulse to self-destruction. A number of the women explain that they have attempted suicide, some of them multiple times; others that they have suffered from suicidal thoughts; many of the other affidavits describe other forms of self-destructive behavior. In answer to the question "How has your abortion affected you?" Lori in Texas says that she suffered suicidal thoughts for several years, followed by an "inability *and unwillingness* to have a successful life."[29] Robin in Tennessee writes that she considered herself "a murderer and unworthy of life. . . . There were times when I wished I would just stop breathing."[30] The deep sense of a debt that must be paid produces in some of the women an obsessive fear of losing subsequent children as punishment for having aborted previous children. Both Robin in Tennessee and Terrie in Texas speak of the burden of such forebodings; Terrie writes that "It has always been a struggle for me not to think" this way.[31]

There are at least two reasons to expect disorders in interpersonal relationships in the aftermath of abortion. One is that the consciousness of guilt isolates us. We

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[29] Emphasis added.

[30] *Id.* at 129.

[31] *Id.* at 81.

cannot but feel that to take a life is to break sacred bonds, and having violated such intimacy, we feel that we no longer deserve it from others. The other reason arises from the very different fact that a woman who has an unexpected pregnancy is so often subjected to strong pressure *from* other people to do what conscience forbids. This causes her to feel not only that she cannot be trusted herself, but also that others cannot be trusted either. We find illustrations of both of these phenomena in the responses of post-abortive women to the question "How has your abortion affected others in your life?"

One common theme in the affidavits of post-abortive women is problems in relationships with men in the aftermath of abortion. For example, Lisa in Kentucky writes that her abortions have "affected every relationship I've had with men," Robin in Tennessee writes that following her abortion, "sex, love, romance with my husband is/was extremely difficult," and Susan in Florida speaks of a broken marriage and "many sexual partners – always looking for love in the wrong places." Tara in Hawaii writes that after her abortion she developed an anger toward her boyfriend that persisted after she married him. A number of the women point to their abortions as contributing to divorce.

A second theme in the affidavits is problems in relationships with children after abortion. Susan in Florida speaks of her acquired "distaste" for children. In the same vein, Camelia in Texas writes that she had "difficulty in bonding with my living children."[32] At the other end of the

[32] *Id.* at 133.

spectrum, compensation, Elizabeth in California speaks of being "smothering" towards her children.[33]

Many of the post-abortive women say that after abortion they have suffered problems in relating not only to men or to children, but also to people in general. For example, Karen in Broward County, Florida, writes "Because of my own emotional state of mind, and guilt, I have kept everything inside and have not been free to give my life to other people." Lana in Texas speaks of "anger between everyone in my life and myself." Lori in Texas explains that "for many years I hated people, myself, life and that causes an inability to have deep personal relationships." Tara in Hawaii writes simply that she "did not want to be around others."

The last of the phenomena that our analysis of conscience has led us to expect is that attempts at self-justification for abortion ultimately fail. The affidavits bear out this expectation. R.G. in Florida appears baffled; she complains poignantly, "And it is so difficult to heal because even though 'choice' is [acc]epted, to have had an abortion is taboo. How can that be?"[34] Candice in California has come to recognize the clash between her conscience on the one hand and the common rationalizations for abortion on the other. In answer to the question, "Based on your experience, what would you tell a court that believes abortion should be legal?" she writes "I would tell them that I was raped and therefore 'justified' in my abortion, but it didn't change a thing. I still suffered because I was led to believe that taking my child's life was OK. It was

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[33] *Id.* at 72.

[34] *Id.* at 99.

not & I have been living with that for almost five years."[35] S.C. in Georgia poignantly writes "[i]f I was only carrying a 'clump of tissues' why was my heart ripped out after the procedure was performed?"[36]

A similar awareness of the clash is found in the affidavit of Carmen in Georgia. *How has your abortion affected you?* "I was okay with it until after it happened. I . . . felt like I had done something very wrong." *Were you adequately informed of the consequences of abortion?* "No, I really believed the baby was not formed, or alive." *Were you adequately informed of the nature of abortion, what it is, what it does?* "I was told what was to happen. But that went around the facts. That a baby was to die."

With admirable insight, Carmen distinguishes between what she actually believed deep down, and what she tried to make herself believe in order to go through with the act. In reply to the question "Did anyone pressure you into having an abortion?" she reports "I wanted to believe that I couldn't handle [having a child]. I thought my life would end if I had another child."

Those four words, "I wanted to believe," express hard-won moral honesty often lacking, judging from the affidavits, among the personnel of abortion facilities. Writes H.H. in Texas, "I was told that the baby was not alive, that there was no reason to feel badly." Patti in Arkansas submits, "I was told it was not a baby yet." According to Karen in Broward County, Florida, "I was told it was a simple procedure to remove 'some tissue.'" Kelli in

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[35] *Id.* at 122-23.

[36] *Id.* at 73.

Kentucky explains that "The people at the clinic . . . kept referring to the baby as the 'contents of my uterus.'" Why abortion facility personnel would employ such euphemisms, however, is not difficult to understand. They had their own consciences to deal with.

CONCLUSION

The wrong of deliberately taking innocent human life is so profoundly lodged in the human moral intellect that it is impossible for the normal adult woman not to experience participation in abortion as an assault on her own conscience. To be sure, a woman who participates in abortion may talk herself into a justification for abortion that seems adequate at the time. The problem is that such justifications do not achieve conviction "all the way down." Whatever conviction they bring about may be emotionally charged, but lies only on the surface, and the structures of deep conscience rebel. The resulting interior conflict is profoundly damaging to the woman who has had the abortion.

As the above analysis leads one to expect – and as the affidavits of post-abortive women filed with the district court in this case confirm and illustrate – such damage manifests itself in such forms as remorse, shame, self-accusation, self-hatred, and anger; inconsolable feelings of grief, loss, and regret; nightmares, depression, and anxiety; numbness, withdrawal, avoidance, and difficulty in thinking clearly; the sense that one must atone, or pay a debt; efforts to carry out such atonement, including suicide and other self-destructive behavior; fear of punishment by God; abuse of alcohol or drugs, either to medicate one's

pain or to further atone for one's deed; disturbances in relationships with men, with children (including one's own), and with people in general; profound mistrust of self as well as others; and, finally, collapse of the justifying script.

Insofar as abortion brings about such profoundly destructive effects on women who participate in them, a pivotal assumption of *Roe v. Wade* and *Doe v. Bolton* – that a right to abortion *upholds* the well being of women – is called radically into question. The Supreme Court should therefore grant the petition for a writ of certiorari and take this opportunity to reconsider *Roe v. Wade* and *Doe v. Bolton*.

Respectfully submitted,

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